



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 9, 1998

Mr. Terrence Welch  
Attorney for City of Flower Mound  
1717 Main Street  
Suite 4400  
Dallas, Texas 75201-7388

OR98-3029

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120544.

The Town of Flower Mound (the "town") has received two requests for related information. The first seeks all information relating to the investigation of the death of Jose Guadalupe Martinez. You have submitted the responsive information to this request as Exhibit 4. The second asks for all information in offense report number 982304 which concerns the death of Victor Garcia, a/k/a, Melquiades Buenrostro. You have submitted Exhibit 3 as the responsive information to the second request. You claim that the requested information in both requests is excepted from disclosure by sections 552.101 and 552.108 of the Government Code.

We will first examine the request concerning Mr. Martinez. The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be

overcome by a compelling demonstration that the information should not be made public. *See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).*

The town received the first request concerning Mr. Martinez on September 8, 1998. You did not seek a decision from this office until September 28, 1998. Consequently, you have not met your statutory burden. Gov't Code 552.301. The requested information is therefore presumed public.<sup>1</sup> You contend, however, that the photographs of Mr. Martinez are protected from disclosure by a right of privacy under section 552.101. Such a showing provides a compelling demonstration. ORD 150. The right of privacy, however, lapses upon the death of an individual. Attorney General Opinions JM-229 (1984), H-917 (1976); Open Record Decision Nos. 272 (1981), 216 (1978). Mr. Martinez is deceased. Thus, we conclude that no right of privacy applies in this instance. In the absence of a demonstration that the requested information concerning Mr. Martinez is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information in Exhibit 4.<sup>2</sup> Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

As for the request concerning Mr. Garcia, you claim that it is excepted from disclosure by sections 552.101 and 552.108. Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

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<sup>1</sup> Generally, section 552.108 does not provide a compelling demonstration to overcome the presumption of openness.

<sup>2</sup> We also point out that the information in Exhibit 4 contains an autopsy report. The Open Records Act's exceptions do not, as a general rule, apply to information expressly made public by other statutes. Open Records Decision No. 525 (1989). Autopsy reports prepared by a medical examiner are public records by statute. Code Crim. Proc. art. 49.25 § 11; Open Records Decision No. 529 (1989).

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

\* \* \*

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 applies. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate that the requested information about Mr. Garcia concerns a criminal investigation where no charges were filed. You state that the investigation is closed and you have explained that the criminal investigation concluded in a manner other than a conviction or deferred adjudication. You have shown the applicability of section 552.108(a)(2) for Exhibit 3.

We point out, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, except for basic information, Exhibit 3 may be withheld under section 552.108(a)(2).<sup>3</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

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<sup>3</sup> Because we resolve your request concerning Exhibit 3 under 552.108, we do not consider your additional argument against disclosure for this information.

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly stylized font.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 120544

Enclosures: Submitted documents

cc: Mr. Larry Adelstein  
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(w/o enclosures)

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